

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MICHEL TOLIVER,

Plaintiff,

-v.-

10 Civ. 5354 (DAB)

ADOPTION OF REPORT
AND RECOMMENDATION

OFFICE-DEPARTMENT OF CORRECTIONS NYC
ET AL.,

Defendants.

-----X
DEBORAH A. BATTS, United States District Judge.

This matter is before the Court upon the December 11, 2012 Report and Recommendation of United States Magistrate Judge James C. Francis IV (the "Report"). Judge Francis's Report recommends that Plaintiff's request for leave to amend the Complaint be GRANTED in part and DENIED in part. (Report at 1.) The Report, likewise, recommends that Defendants' Motion for Summary Judgment be GRANTED in part and DENIED in part. (Id.)

"Within fourteen days after being served with a copy [of a Magistrate Judge's Report and Recommendation], a party may serve and file specific written objections to the proposed findings and recommendations." Fed. R. Civ. P. 72(b)(2); accord 28 U.S.C. § 636(b)(1)(C). The District Court may adopt those portions of the Report to which no timely Objection has been made, so long as

there is no clear error on the face of the record. Wilds v. United Parcel Serv., Inc., 262 F. Supp. 2d 163, 169 (S.D.N.Y. 2003). "[F]ailure to object timely to a magistrate's report operates as a waiver of any further judicial review of the magistrate's decision." Caidor v. Onondaga County, 517 F.3d 601, 604 (2d Cir. 2008) (internal quotation marks omitted). This rule applies to pro se parties so long as the Magistrate Judge's Report "explicitly states that failure to object to the report within [fourteen] days will preclude appellate review and specifically cites 28 U.S.C. § 636(b)(1) and rules 72, 6(a) and 6(e) of the Federal Rules of Civil Procedure." Small v. Sec'y of Health & Human Servs., 892 F.2d 15, 16 (2d Cir. 1989) (per curiam).

Despite being advised of the procedure for filing Objections in Judge Francis's Report and warned that failure to file Objections would waive objections and preclude appellate review (Report at 32), no Party has filed Objections to the Report.

Having reviewed the Report and finding no clear error on the face of the record, see 28 U.S.C. § 636(b)(1)(B), it is hereby ORDERED and ADJUDGED that the Report and Recommendation of United States Magistrate Judge James C. Francis IV, dated December 11,

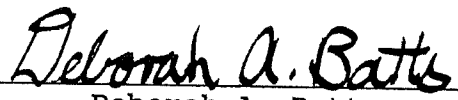
2012, be and the same hereby is APPROVED, ADOPTED, and RATIFIED by the Court in its entirety. Plaintiff's request for leave to amend the Complaint is hereby DENIED insofar as it seeks to add as defendants the City of New York and C.O. Murrell, and GRANTED insofar as it seeks to add as a defendant C.O. Okvist.

Furthermore, Defendants' Summary Judgment Motion is (1) GRANTED to the extent that it relates to the Department of Correction NYC and its Commissioner, Chief, and Warden; (2) GRANTED on the Deliberate Indifference claim against Captain Phifer; (3) GRANTED on the State law claims; and (4) DENIED on the Failure to Intercede claim against Captain Phifer. The Clerk of the Court is directed to close ECF entries 81 and 87 in this matter.

SO ORDERED.

Dated: July 9, 2013

New York, New York


Deborah A. Batts
United States District Judge